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6

7
8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 FOR THE COUNTY OF MARIN

RECEIVED
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10 CHURCH OF SCIENTOLOGY INTERNATIONAL,)
11 a California not-for-profit)
religious corporation,)
12)
Plaintiff,)
13 vs.)
14)
GERALD ARMSTRONG; MICHAEL WALTON;)
15 THE GERALD ARMSTRONG CORPORATION,)
a California for-profit)
16 corporation; DOES 1 through 100,)
inclusive,)
17)
Defendants.)
18)
19

No. 157 680 HUB LAW OFFICES

MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF
MOTION TO COMPEL FURTHER
RESPONSES TO REQUESTS FOR
ADMISSION FROM PLAINTIFF

Date: 9/2/94
Time: 10:00 a.m.
Dept: Referee Benz
Trial Date: 9/29/94

20 I. INTRODUCTION

21 Code of Civil Procedure section 2033 (1) states in part "If
22 the party requesting admissions, on receipt of a response to the
23 requests, deems that (1) an answer to a particular request is
24 evasive or incomplete, or (2) an objection to a particular request
25 is without merit or too general, that party may move for an order
26 compelling a further response." For the purposes of the instant
27 motion, Scientology, rather than directly responding to the
28 requests at issue, interposed boilerplate objections as follows:

1 Plaintiff objects to this request for admission on the
2 grounds that it is (1) irrelevant to the subject matter
3 of the action, (2) interposed solely to harass, oppress
and annoy the plaintiff, and (3) vague, ambiguous and
unintelligible as phrased.

4 As will be discussed below, the objections are without merit
5 as well as too general.

6 **II. STATEMENT OF FACTS**

7 Plaintiff Church of Scientology International (CSI) has sued
8 Gerald Armstrong, The Gerald Armstrong Corporation, and Michael
9 Walton for allegedly fraudulently conveying a house and cash in
10 order to defeat CSI's ability to collect damages for the alleged
11 breaches of a settlement contract with Armstrong.

12 Thus, CSI's claim is necessarily predicated upon that
13 settlement contract. As matters in defense, Armstrong asserts
14 that his compliance was obtained by duress that was generated by
15 CSI's inalterable adherence to certain policies and practices.

16 In his answer Armstrong states:

17 Armstrong denies that the agreement contained carefully
18 negotiated and agreed-upon provisions. Armstrong was
19 not included in one word of the negotiations, which were
20 engineered by CSI through its fair game operations
21 toward and compromise of Armstrong's attorney, Michael
22 Flynn. Armstrong never agreed to the conditions, but
did agree with the representations of his attorney that
the conditions were unenforceable. CSI intended and
used the settlement to continue its litigation war with
Armstrong, and to extend its use of litigation to attack
its perceived enemies.

23 [Answer filed 11/30/93, at 2:4-13]

24 Foremost among said policies is that named fair game. An
25 individual or entity is subject to said policy if he is considered
26 by Scientology as an enemy. In its opinion in Church of
27 Scientology v. Armstrong (1991) 232 Cal.App.3d 1060, the Second
28 District Court of Appeal upheld Judge Breckenridge's decision in

1 Armstrong's favor ^{1/} when Scientology first sued him and found:

2 Commencing in February 1992, the international Church of
3 Scientology issued a series of "suppressive person
4 declares" in effect labeling Armstrong an enemy of the
5 Church ... These "declares" subjected Armstrong to the
6 "Fair Game Doctrine" of the Church, which permits a
7 suppressive person to be "tricked, sued or lied to or
8 destroyed ... [or] deprived of property or injured by
9 any means by any Scientology

10 (Id. 232 Cal.App.3d at 1067) ^{2/}

11 In the current litigation, Armstrong's Eleventh Affirmative
12 defense of Duress and Undue Influence states:

13 Plaintiff is barred from bringing this action
14 against Armstrong because it implemented fair game
15 stratagems on Armstrong, his attorney Michael Flynn, and
16 upon other anti-Scientology litigants and would continue
17 such conduct against all such persons unless all such
18 anti-Scientology litigants, including Mr. Flynn, signed
19 settlement agreement substantially similar to that
20 signed by Armstrong.

21 [Answer filed 11/30/93, at 13:3-9]

22 **III. SCIENTOLOGY HAS FAILED TO SUFFICIENTLY RESPOND**

23 ¹ A copy of this decision has been filed herein on October
24 28, 1993 as Exhibit 1.A in Vol. I of Defendants' Evidence In
25 Support Of Defendants' Motion To Commence Coordination Proceedings
26 (hereinafter "Breckenridge Opinion").

27 ² California courts of appeal are no strangers to the harm
28 wreaked by fair game. (see Wollersheim v. Church of Scientology
29 (1989) 212 Cal.App.3d 872, 888 [fair game is the modern equivalent
30 to the Christian inquisitional practice of destroying heretics by
31 stripping him of his economic, political and psychological power];
32 Allard v. Church of Scientology (1976) 58 Cal.App.3d 439, 444
33 [former Church member falsely accused by Church of grand theft as
34 part of fair game policy, subjecting him to arrest and
35 imprisonment])

1 TO CERTAIN REQUESTS FOR ADMISSION OF FACTS

2 A. The Requests Pertaining To Fair Game

3 1. Scientology's Objections

4 As discussed more fully below, the requests for admission
5 which pertain to fair game are Nos. 3, 6, 7, 8, 9, 10 and 13. As
6 to each such request, Scientology has interposed the same
7 objection which has been recited above.

8 As each item is discussed, Armstrong will address the
9 components of objection.

10 2. Request No. 3

11 Request No. 3 asks plaintiff to admit that from 1984
12 through 1986 it or its agents took action to accuse Armstrong's
13 former counsel, Michael Flynn, "with attempting to have cashed a
14 check on an account of L. Ron Hubbard at the Bank of New England."

15 Part of the fair game action taken by Scientology against
16 Flynn was to publicly attack his reputation by characterizing him
17 as a criminal. (See Separate Statement of Requests and Responses
18 in Dispute) One element of Armstrong's theory of defense is that
19 in consequence of the pressure generated by the fair game
20 activities that Scientology imposed on Flynn, Flynn coerced
21 Armstrong into signing the settlement contract. Based upon
22 Armstrong's affirmative defense, it is clear that this request is
23 relevant to the subject matter of the litigation. (C.C.P. § 2017
24 (a); Colonial Life & Acc. ins. Co. v. Sup.Ct. (1982) 31 Cal.3d
25 785, 790; Cembrook v. Superior Court (1961) 56 Cal.2d 423, 429)

1 Thus, this request is relevant to Armstrong's defense. ^{3/}

2 Particularly in light of the undisputed relevance of this
3 request, Scientology's objection that the request is intended to

4
5 ³ As noted in Armstrong's separate statement of requests
6 and responses in dispute, he states: "The request is relevant to
7 the subject matter of the action, interposed for legitimate
8 discovery reasons, and very clear. Armstrong contends that
9 Scientology subjected Michael Flynn to a campaign of "Fair Game"
10 which included complex intelligence and Black PR operations, and
11 which resulted, as Scientology intended, in Flynn's desire to get
12 out of Scientology-related litigation; as a defendant, plaintiff,
13 attorney of record or co-counsel at almost any cost. One of the
14 operations Scientology ran against Flynn involved accusing him in
15 legal proceedings, including Armstrong I, and in the international
16 media of participating in, indeed masterminding, the forgery of a
17 \$2,000,000 check on one of Hubbard's bank accounts. Flynn
18 represented Armstrong. To get out from under the fair game
19 attacks and threat Flynn passed on Scientology's duress to
20 Armstrong, acting as Scientology's de facto agent. Flynn told
21 Armstrong that Scientology had ruined his marriage, threatened his
22 family and law practice, and attempted to have him murdered.
23 Armstrong had himself personal knowledge of the organization's
24 illegal policies and practices, and had himself been the target of
25 fair game attacks and threat. Flynn advised Armstrong that he,
26 Flynn, had to get out of the Scientology litigation, including
27 Armstrong's case, and stated that the threats and attacks would
28 continue if Armstrong did not sign the subject settlement
agreement. If what Armstrong claims was done to Flynn by
Scientology and what Flynn told Armstrong is true, the subject
settlement agreement was signed under duress, is invalid, and
Scientology's claim of damages owed by Armstrong, on which it
bases its claims in this action is invalid. Scientology's years
of acts against Flynn, therefore, have undeniable relevance to
this action. CSI did not demur to or move to strike
Armstrong's verified answer herein, which contains defenses based
on such acts, thus CSI's objections to this request for admission
are unfounded and obstructive. See, e.g., eleventh affirmative
defense (Duress and Undue Influence) in Armstrong's verified
answer. Moreover, Judge Thomas ruled in his order sustaining
CSI's demurrer to Armstrong's first amended cross-complaint that
the issues (concerning Armstrong's cause of action for declaratory
relief regarding the subject agreement based on duress, etc.) will
be determined either in the Los Angeles action or in this action.
The subject matter of this request, therefore, is already ordered
relevant in CSI's clearly interrelated lawsuits against Armstrong,
and to argue that this request should not be answered because it
is not relevant in either case, but certainly where there is a
September trial date, is not done in good faith. Furthermore,
Armstrong has filed a second amended verified cross-complaint
which is based on and includes a recitation of Scientology's fair
game acts against Flynn."

1 "harass, oppress and annoy" it is without basis.

2 Finally, the objection that the request is "vague, ambiguous
3 and unintelligible" is factually without merit. The request is
4 not so ambiguous that Scientology is unable in good faith to frame
5 an intelligent response. (Deyo v. Kilbourne (1979) 84 Cal.App.3d
6 771, 783; Cembrook, supra. 56 Cal.2d at 429)

7 **3. Requests No. 8, 9, 10**

8 Requests No. 8, 9, and 10 respectively ask Scientology
9 to admit that it considered that Flynn was, Armstrong was, and
10 Armstrong is "an enemy of plaintiff."

11 These requests are obviously relevant to whether or not Flynn
12 and Armstrong were, and are, subjects of the fair game policy.
13 Armstrong reasserts the above arguments regarding the relevance of
14 this request, in addition to the arguments which address the other
15 objections.

16 **4. Request No. 13**

17 Request No. 13 asks

18 That the following advice of L. Ron Hubbard is a
19 part of Scientology scripture: "The law can be used very
20 easily to harass, and enough harassment on somebody who
21 is on the thin edge anyway, well knowing that he is not
22 authorized, will generally be sufficient to cause his
23 professional decease. If possible, of course, ruin him
24 utterly."

25 This is relevant to whether or not the foregoing "scripture"
26 addresses the implementation of the portion of fair game which
27 states that an enemy of Scientology may be "sued . . . or
28 destroyed."

29 Armstrong reasserts the above arguments regarding the
30 relevance of this request, in addition to the arguments which
31 address the other objections.

1 5. Requests No. 6 & 7

2 Request No. 6 asks Scientology to admit "That the Guardian's
3 Office of Scientology staff used means to deal with people the
4 Guardian's Office perceived as enemies of Scientology that were
5 against the law." ^{4/}

6 Request No. 7 asks Scientology to admit: "That the Guardian's
7 Office functions were taken over by Sea Organization units,
8 offices or organizations." ^{5/}

9 Armstrong reasserts the above arguments regarding the
10 relevance of this request, in addition to the arguments which
11 address the other objections.

12 Certainly some of Scientology's fair game actions have been
13 against the law. (see Wollersheim, supra.; Allard, supra.) The
14 in-house agency that was responsible for such conduct is within
15 the scope of discovery, particularly because such agency may have
16 been, and might be, responsible for fair game activities against
17 Armstrong.

18
19
20 ⁴ The "Guardian's Office" was a specific organizational
21 unit within Scientology. "The Guardian's Office is charged with
22 the protection of Scientology. The Guardians handle intelligence
23 matters including covert operations to acquire government
24 documents critical of Scientology, internal security within
25 Scientology, and covert operations to discredit and remove from
26 positions of power all persons whom Scientology considers to be
27 its enemies." (United States v. Heldt (D.C. Cir. 1981) 668 F.2d
28 1238, 1247)

25 ⁵ In 1992, the United States Tax Court held that
26 Scientology's corporate structure was a "deceptis visus" and that
27 control was exerted through the Sea Organization. "Real control
28 is exercised less formally, but more tangibly, through an
unincorporated association, the Sea Organization, more commonly
referred to as the Sea Org." (Church of Spiritual Technology v.
United States (1992) 26 Cl.Ct. 713, 718, affirmed 991 F.2d 812)

1 **B. The Request Pertaining To The**
2 **Flynn Non-Representation Contract**

3 Request No. 11 asked Scientology to admit "That plaintiff
4 entered into a contract with Michael Flynn which prohibited him
5 from representing any parties, including Armstrong, in future
6 litigation against plaintiff or any other Scientology-related
7 organizations, entities or individuals."

8 This request is relevant to Armstrong's Eleventh Affirmative
9 Defense, quoted in full above in the section discussing the
10 relevance of the fair game policy to this litigation.

11 It is also relevant to Armstrong's Thirty-Sixth Affirmative
12 Defense of Conflict of Interest which asserts:

13 Plaintiff is barred from bringing this action against
14 Armstrong because defendant Armstrong's former attorney
15 Michael Flynn, in conjunction with settling Armstrong's
16 case against Scientology-related entities, also settled
17 30 other cases, including cases of his own against
18 Scientology-related entities without procuring outside
19 counsel for Armstrong.

20 [Answer filed 11/30/93, at 20:25-21:2]

21 Moreover, whether or not Scientology entered into a contract
22 with Flynn whereby Flynn agreed never to represent Armstrong in
23 future litigation against Scientology is relevant to Armstrong's
24 defense that Flynn advised him that the salient provisions of the
25 settlement contract were not enforceable. [Answer filed 11/30/93,
26 at 3:8-11, 7:20-21, 20:11-17]

27 **C. The Request Pertaining To Armstrong's Alleged Breaches**

28 Request No. 12 asks Scientology to admit "That no enmity was
ever generated by Armstrong at any time in plaintiff or
plaintiff's members." A central justification for Scientology's
lawsuit is that Armstrong engaged in such activity [Complaint

1 filed 7/23/93 at 2:4-19] which allegation he has denied.
2 Therefore, it relates to a matter that is in controversy between
3 the parties and is relevant. (C.C.P. § 2033 (a))

4 Request No. 21 asks Scientology to admit "That Armstrong did
5 not begin in February 1990 to breach the settlement agreement."
6 Since it is such alleged breaches, if any, upon which Scientology
7 rests its claim on which the instant lawsuit rests, the relevance
8 of this request is central.

9 Armstrong reasserts the above arguments regarding the
10 relevance of this request, in addition to the arguments which
11 address the other objections.

12 D. The Request Pertaining To Scientology's Alleged Damages

13 Request No. 23 asked that Scientology admit "That plaintiff
14 has not been damaged in any way or manner whatsoever by any
15 alleged breaches of the Settlement Agreement by Armstrong at any
16 time."

17 Whether or not Scientology has been damaged by what it
18 alleges to have been Armstrong's breaches is obviously central to
19 the case. If Scientology has not been damaged, there will not be
20 any basis for its claim that Armstrong fraudulently conveyed his
21 assets in order to make himself judgment-proof so that he could
22 breach the settlement contract and suffer no penalty therefrom.

23 As to this response, Armstrong again reasserts the above
24 arguments regarding the relevance of this request, in addition to
25 the arguments which address the other objections.

26 IV. MONETARY SANCTIONS SHOULD BE IMPOSED

27 Code of Civil Procedure section 2033 (1) states that the
28 Court shall impose a monetary sanction under Code of Civil


1 relevance. As to each of the relevance objections, however, they
2 were interposed with no justification inasmuch as each request
3 dealt directly with the issues framed by the complaint and answer
4 in this litigation.

5 **V. CONCLUSION**

6 Based upon the foregoing arguments, defendant Gerald
7 Armstrong respectfully submits that the motion to compel further
8 responses should be granted and monetary sanctions imposed.

9 DATED: August 17, 1994

HUB LAW OFFICES

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11 
12 By: _____
13 FORD GREENE
14 Attorney for Defendant and
15 Cross-Complainant
16 GERALD ARMSTRONG
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